

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE		EFFECTIVE DATE 05/24/2004	NUMBER 02.03.109
SUBJECT DISCRIMINATORY HARASSMENT		SUPERSEDES 02.03.109 (05/27/02)	
		AUTHORITY MCL 37.1202, et seq.; 37.2101, et seq.; 791.203; 29 USC 623, et seq.; 42 USC 2000, et seq.; 42 USC 12101, et seq.; Civil Service Commission Rule 1-8	
		ACA STANDARDS [#acastandards#]	
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POLICY STATEMENT:

The Department is committed to maintaining a work environment free from discriminatory harassment.

RELATED POLICY:

02.03.100 Employee Discipline

POLICY:

DEFINITION

- A. Complainant - An employee who alleges s/he is the subject of or a witness to discriminatory harassment.
- B. Discriminatory Harassment - Unwelcome advances, requests for favors, and other verbal or non-verbal communication or conduct (e.g., comments, innuendo, threats, jokes, pictures, gestures) based on race, color, national origin, disability, sex, sexual orientation, age, height, weight, marital status, religion, genetic information or partisan considerations under any of the following conditions:
 - 1. Submission to such conduct or communication is made, either explicitly or implicitly, a term or condition to obtain employment.
 - 2. Submission to or rejection of such conduct or communication is used as a factor in decisions affecting the person's employment.
 - 3. The conduct or communication has the purpose or effect of substantially interfering with a person's employment or creating an intimidating, hostile or offensive work environment.
- C. Genetic Information - Information about a gene, gene product or inherited characteristic of an individual derived from the individual's family history or a genetic test.
- D. Management Representative - Staff designated pursuant to PD 02.03.100 "Employee Discipline" to initiate disciplinary investigations, chair disciplinary conferences and/or recommend/impose discipline.

GENERAL INFORMATION

- E. For purposes of this policy, "Administrator" means the Administrators of the Special Alternative Incarceration Program facility (SAI) and Michigan State Industries as well as each Warden, Correctional Facilities Administration (CFA) Regional Prison Administrator, Field Operations Administration (FOA) Regional Administrator, Regional Human Resource Officer, and Bureau of Health Care Services (BHCS) Regional Health Administrator, unless otherwise indicated.
- F. This policy directive addresses only discriminatory harassment, including sexual harassment, between employees. Other forms of harassment involving employees not addressed by this policy directive are

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a violation of work rules and may result in discipline pursuant to PD 02.03.100 "Employee Discipline".

- G. This policy directive also does not address discriminatory harassment of employees by offenders. Such conduct may result in discipline pursuant to PD 03.03.105 "Prisoner Discipline". Harassment of offenders by employees also is not addressed by this policy directive. Such conduct is prohibited pursuant to PD 03.03.130 "Humane Treatment and Living Conditions for Prisoners" and PD 03.03.140 "Prohibited Conduct in Facilities Housing Female Prisoners", and may result in discipline pursuant to PD 02.03.100 "Employee Discipline".
- H. The Administrator of the Equal Employment Opportunity (EEO) Office in the Bureau of Human Resources (BHR) is responsible for coordinating the Department's efforts to eliminate discriminatory harassment in the work place. This includes determining the training needs of Department staff in this area and providing necessary training for Department employees, including required training for harassment counselors and investigators, in conjunction with the Office of Training and Recruitment, BHR.
- I. Whenever a complaint of discriminatory harassment is made against an administrator, the appropriate supervisor of that administrator shall assume the responsibilities of the administrator set forth in this policy directive for reporting and investigating the complaint.
- J. Whenever a complaint of discriminatory harassment is made against an employee of the EEO office, the BHR Administrator or a designee not employed in the EEO Office shall assume the responsibilities of the EEO Administrator set forth in this policy directive for reporting and investigating the complaint as well as determining appropriate disposition.
- K. Where in conflict with PD 02.03.100 "Employee Discipline", this policy shall control for complaints of discriminatory harassment.

RESPONSIBILITY OF EMPLOYEES

- L. All employees are prohibited from engaging in discriminatory harassment. In addition, supervisors and managers must make a good faith effort to eliminate and prevent discriminatory harassment from occurring in their respective areas. Whenever a supervisor or manager becomes aware of allegations of, or witnesses, such behavior by any employee under his/her supervision, s/he shall refer the person allegedly harassed to the appropriate harassment counselor and report the alleged harassment to the appropriate harassment counselor to ensure the allegations are investigated in accordance with this policy.

REPORTING DISCRIMINATORY HARASSMENT

- M. In consultation with the EEO Administrator or designee, each administrator shall designate at least two harassment counselors and at least two harassment investigators for their respective areas. In correctional facilities, there shall be at least one harassment counselor per shift. The same employee shall not be designated as both an investigator and counselor. Employees designated as harassment investigators shall not be exclusively represented by a collective bargaining unit.
- N. The EEO Administrator or designee shall serve as the harassment counselor for Central Office. Harassment investigators for Central Office shall be designated by the EEO Administrator or designee and may include other Department staff with appropriate supervisory approval.
- O. Each administrator shall ensure written notice is posted to advise employees in their respective areas of the name, work telephone number and work location of their harassment counselors. The EEO Administrator shall ensure a similar notice is posted at all Central Office work sites to advise Central Office employees and employees attending training at the DeMarse Training Academy of this information.

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- P. An employee who believes s/he is the subject of or witnessed discriminatory harassment is required to report it in writing to the appropriate supervisor, harassment counselor, or EEO Office as soon as possible but no later than 180 calendar days after the alleged harassment occurred. Supervisors shall forward reports they receive to the harassment counselor or EEO Office, as appropriate.

INVESTIGATIONS

- Q. The appropriate harassment counselor shall meet with each person who files a complaint pursuant to Paragraph P and advise him/her of the following:
1. That all allegations of discriminatory harassment will be investigated, even if the complainant does not want an investigation to be conducted.
 2. That the identity of the complainant along with the allegations made may be disclosed as part of the investigation, even if the complainant does not want his/her identity or the allegations disclosed.
 3. That appropriate action will be taken to protect the complainant from retaliation for filing the complaint.
- R. The harassment counselor shall assist the complainant in completing the Complaint Form for Discriminatory Harassment Reporting and Prevention (CAJ-339). The complaint form must include a description of all of the specific acts of discriminatory harassment that allegedly occurred, the names of all witnesses and the dates on which the alleged harassment occurred. The counselor shall note on the Discriminatory Harassment Reporting and Prevention Contact Form (CAJ-326) if the complainant refuses to complete the complaint form.
- S. The complainant is required to sign the complaint form to verify its accuracy. If the complainant is not the employee allegedly harassed, that employee also must sign the complaint form to acknowledge only that s/he was advised that the complaint was made and that s/he had an opportunity to review it. The counselor shall note on the contact form if the complainant or employee allegedly harassed refused to sign it.
- T. The counselor shall sign and forward the complaint form(s) and the contact form to the appropriate administrator or, in Central Office, to the appropriate supervisor(s) for review. The administrator or supervisor shall forward the complaint and contact forms, along with his/her preliminary findings as to whether the allegations may constitute discriminatory harassment, to the EEO Administrator or designee for review and to determine if further investigation is needed. The EEO Administrator or designee shall order further investigation unless there is agreement that the actions alleged do not constitute discriminatory harassment.
- U. The referring administrator or, for Central Office, the EEO Administrator shall ensure that the complainant and the employee allegedly harassed if not the complainant are notified in writing as to whether an investigation will be conducted. If an investigation will not be conducted, they also shall be notified whether the complaint will instead be investigated as a work rule violation pursuant to PD 02.03.100 "Employee Discipline". The subject of the complaint may be suspended pending the investigation consistent with the provisions set forth in PD 02.03.100.
- V. Whenever an investigation is to be conducted pursuant to this policy, the appropriate administrator or, for Central Office, the EEO Administrator or designee shall assign a harassment investigator to conduct the investigation. The harassment investigator may be from another facility or office with prior approval of the administrator or appropriate supervisor. The investigation shall be conducted and a report of the investigation prepared in accordance with PD 02.03.100 "Employee Discipline" and Civil Service Commission rules and regulations. However, the investigation shall be completed within 45 calendar days after receipt of the complaint form unless the EEO Administrator or designee grants an extension.

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- W. The completed investigation packet shall be forwarded to the appropriate Management Representative for review. If the investigation is determined to be complete, the Management Representative shall forward the packet to the EEO Administrator or designee. The EEO Administrator or designee shall consult with the referring Management Representative to determine if there is sufficient evidence to formally charge the employee with a rule violation. If a consensus cannot be reached, the matter shall be referred to the BHR Administrator for resolution. If the subject of the complaint is not charged, s/he shall be notified in writing that the investigation has been concluded and charges will not be filed.

DISCIPLINARY CONFERENCES/IMPOSITION OF DISCIPLINARY SANCTIONS

- X. Whenever disciplinary charges are issued, the disciplinary conference shall be conducted and any disciplinary sanctions imposed consistent with the requirements set forth in PD 02.03.100 "Employee Discipline". However, the EEO Administrator or designee shall be consulted prior to the Management Representative determining whether the subject of the complaint committed a rule violation. If a consensus cannot be reached as to whether a rule violation was committed and, if so, the appropriate discipline to be imposed, the matter shall be referred to the BHR Administrator for resolution.
- Y. The appropriate Management Representative or, for Central Office, the EEO Administrator shall ensure the complainant, and the employee allegedly harassed if not the complainant, is notified in writing by first class mail of the final disposition of the complaint. This shall include notification of whether any disciplinary action has been taken. However, details of the discipline, including the specific charges and sanctions, shall not be provided. The Management Representative shall ensure that a copy of the notice is sent to the EEO Office. Copies of the notices shall be retained in accordance with the Department's Retention and Disposal Schedule.
- Z. The Management Representative or, for Central Office, the EEO Administrator also shall ensure that the subject of the complaint is notified in writing by first class mail of the final disposition of the complaint. This notification shall be sent at the same time that notice is sent to the complainant pursuant to Paragraph Y. The Management Representative shall ensure that a copy of the notice is sent to the EEO Office. Copies of the notices shall be retained in accordance with the Department's Retention and Disposal Schedule.

DOCUMENTATION

- AA. Management Representatives shall ensure that a copy of all complaint forms resulting in an investigation and all supporting documentation is forwarded to the EEO Office when the case is closed. If an investigation was not conducted, the Management Representative shall ensure that a copy of the complaint form and verification of that decision is forwarded to the EEO Office. The documents shall be retained in accordance with the Department's Retention and Disposal Schedule.
- BB. To the extent practical, complaint forms and investigatory records shall be collected and distributed in a manner that will protect the confidentiality of the information. All requests for documents regarding a complaint or any investigatory records shall be handled as set forth in PD 01.06.110 "Freedom of Information Act - Access to Department Public Records".

RETALIATION PROHIBITION

- CC. Retaliatory action against anyone raising or filing a complaint of any type of discriminatory harassment is strictly prohibited and may result in discipline pursuant to PD 02.03.100 "Employee Discipline". An employee who believes s/he was the subject of such retaliation may file a complaint under this policy.

OPERATING PROCEDURES

- DD. The BHR Administrator shall ensure that procedures are developed as necessary to implement requirements set forth in this policy directive; this shall be completed within 60 calendar days after the effective date of the policy directive. This requirement includes ensuring that their existing procedures

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are revised or rescinded, as appropriate, if inconsistent with policy requirements or no longer needed.

AUDIT ELEMENTS

- EE. A Primary Audit Elements List has been developed and will be provided to Wardens, CFA Regional Prison Administrators, FOA Regional Administrators, the SAI Administrator and the MSI Administrator to assist with self audit of this policy, pursuant to PD 01.05.100 "Self Audit of Policies and Procedures".

PLC:OPH:04/28/04